7

$~R-6E

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **WTR NO. 3-13/2001**

Date of decision: 21st August, 2013

SIDDHARTH PRATAP CHAND ..... Appellant
Through Mr. Anoop Sharma, Advocate.

versus

C.W.T. ..... Respondent
Through Mr. Sanjeev Rajpal, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL):

1. On reference being made under Section 27(3) of the Wealth Tax Act, 1957, Income Tax Appellate Tribunal has referred the following questions of law:-

> a) Whether the Tribunal did not err in law in not accepting the claim of the assessee that 1/3rd share in the property No.6, Aurengzeb Road continuing to be in self occupation of the assessee, even after the collaboration agreement dated 2.5.84 with M/s Ansal Properties and Industries Ltd. was to be valued at Rs.2,03,334/- as returned on the valuation date in accordance with the provisions of sec. 7(4) of the W.T. Act, 1957?
>
> b) (i) Whether the Tribunal did not err in law in holding that the ownership in the property situate at 6, Aurengzeb Road was not transferred after the execution of the collaboration agreement

Signature Not Verified
Digitally Signed By:AMULYA
Signing Date:20.02.2024 11:37
Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

dt. 2.5.84 with M/s Ansal Properties & Industries Ltd. and the assessee was liable to the W.T. Act, 1957?

(ii) Whether the Tribunal did not err in not accepting the legal claim that the only asset left in the hands of the assessee was the interest in future in the flats when they were constructed and not the land transferred which had practically nil value as on the valuation date?"

2. These references pertain to assessment years 1987-88 to 1992-93.

3. Late Pratap Chand, Siddhartha Pratap Chand and Vasavi Pratap Chand were 1/3rd co-owners each of property number 6, Aurangzeb Road admeasuring 2.85 acres. On 2nd May, 1984, they entered into a collaboration agreement with Ansal Properties & Industries Private Limited for construction of residential flats in the said property. Construction activity was commenced by the promoter builder on 1st May, 1985, after taking over possession. The main residential unit already existing in the property was demolished except for the two rooms in the servant quarters, which were retained by the petitioner for their use and occupation.

4. In the wealth tax return filed by the petitioner-assessee, he had declared 1/3rd share in the property as a taxable asset and had valued his share at Rs.2,03,334/-.

5. The Assessing Officer came to the conclusion that the petitioner

assesee had ceased to be in self occupation after entering into collaboration agreement with Ansal Properties & Industries Private Limited. He has held that the property in question was commercial in nature and adopted L&DO rates for commercial properties and assessed the share of the appellant at Rs.4,31,10,000/-.

6. Commissioner of Income Tax (Appeals) dismissed the appeal of the petitioner and affirmed the view taken by the Assessing Officer.

7. Aggrieved, the petitioner preferred further appeal before the Income Tax Appellate Tribunal and raised the following three contentions:-

(i) The petitioner had transferred the property and had ceased to be the co-owner of 6, Aurnagzeb Road, New Delhi as possession was transferred to Ansal Properties & Industries Private Limited.

(ii) In alternative and without prejudice to the contention No.(i), the petitioner was entitled to benefit of Section 7(4) of the Act and the property should be valued for the purpose of wealth tax at Rs. 2,03,334/-.

(iii) The Assessing Officer had wrongly applied commercial L&DO rates and residential L&DO rates should be applied.

8. The third contention of the petitioner has been accepted by the tribunal in their order dated 24th April, 1998, which is a common order passed for all the assessment years, subject matter of the present

references. However, the first two contentions have been rejected. For the purpose of record, we note that Revenue has not preferred any appeal on the third issue.

9. The tribunal in the impugned order has observed and held that no material was brought on record by the petitioner-assessee to show that the collaboration agreement between them and Ansal Properties & Industries Private Limited amounted to and resulted in transfer of title in the property. It has been observed that possession of the property was handed over to the promoter builder, but the ownership rights in the asset, i.e. the property, continued to vest and remain with the petitioner as a co-owner along with other two co-owners. The collaboration agreement did not result in transfer or change the title. Tribunal has mentioned and recorded a specific finding that the petitioner-assessee had not brought on record the date of transfer of title, shown or declared in the income tax proceeding.

10. Before us and along with paper book, the petitioner has not placed any document on record to show that there was transfer of title by a registered instrument or under Section 53A of the Transfer of Property Act. The petitioner has drawn our attention to the letter dated 2nd May, 1984, which has been filed in WTA No.2/2000 in the case of ***Siddhartha Pratap Chand (HUF) Vs. CWT.*** The said appeal pertains to assessment year 1992-93. We have examined the said letter and are

of the opinion that this letter does not result in transfer of property or title. It only permits and allows the promoter builder to construct multi storeyed residential complex on the property at their own cost from their own resources. It provides for sharing of the built up area, basement, parking space, etc. after construction. Another important clause states that a formal agreement shall be executed subsequently and the promoter builder would pay Rs.15 lacs as interest free security deposit on being given vacant possession of minimum of two rooms. Another amount of Rs.10 lacs as interest free security was to be paid by the promoter builder on signing of the letter of intent. Further, a sum of Rs.15 lacs, as interest free security deposit, was required to be paid by the promoter builder after receipt of all sanctions, clearances, exemptions, etc. necessary for commencement of the construction of the building and handing over the physical vacant possession. The building was to be completed within a period of two and a half years from the commencement of construction subject to force majeure conditions and circumstances beyond control. There was a penalty clause also. It was stipulated that Rs.40 lacs deposited as interest free security deposit would be refunded to the promoter builder on completion and handing over of share of the petitioner i.e. the owners.

11. The petitioner has not placed on record or stated when, how and in what manner, the transfer was affected and when and how they had

shown the capital gains on the purported transfers. Thus, the petitioner and other co-owners were the legal owners on the valuation dates.

12. In view of the aforesaid, we do not find any error or mistake in the finding recorded by the tribunal that there was no transfer of title and the petitioner continued to be the 1/3rd co-owner of the property during the period in question.

13. Reliance place on Section 7(4) of the Act has to fail as the section stipulates that the residential house should be exclusively used by the assessee for residential purpose throughout the period of 12 months immediately preceding the valuation date. The assessee himself has stated that he had surrendered and transferred actual physical possession of the property to the promoter builder. Thus, the petitioner assessee was not using the property, i.e. the asset exclusively for residential purpose. The tribunal has recorded that the construction existing on the property except for the two rooms was demolished in the year 1985 i.e. before the valuation date in the present cases, which relate to the assessment years 1987-88 to 1992-93.

14. Possession of substantial portion of the property had been handed over to the promoter builder, who was constructing the same during the period in question.

15. Accordingly, the first two questions i.e. (a) and (b)(i) referred to above are answered against the petitioner and in favour of the

Revenue. It is held that Section 7(4) of the Act is not applicable and it is also held that the petitioner had transferred possession of the property, but had not transferred the title in the property by execution of the collaboration agreement dated 2nd May, 1984 with Ansal Properties and Industries Ltd.

16. Question (b)(ii) is also to be answered against the petitioner as there is no document or paper to show and establish that he had transferred interest in the land to the promoter builder during the period when construction was in progress. No such transfer of rights had taken place. For transfer of rights in land, transfer deeds had to be executed either with the promoter builder or by the petitioner and co-owners with third parties, who after construction would have purchased the flats. In fact, the letter dated 2nd May, 1974 records that after the building becomes ready, there would be transfer of land, as is clear from clause 21 of the said letter, which reads as under:-

> "21. That after the building is ready for occupation, you will transfer the land, as and when required, in favour of the cooperative society or a limited company or Association of persons or firm of the flat-buyers or in the name of our/your nominees or successors as the case may be, or, alternatively, if desired by you, you may transfer the land in favour of a cooperative society earlier also if permissible under law and if practicable."

17. The question number (b) (ii) is also, therefore, answered against

the petitioner and in favour of the Revenue.

18. The references are accordingly disposed of. No costs. We have already stated above that the tribunal has directed the Assessing Officer to apply the residential rates and not the commercial rates and to this extent the order of the tribunal has not been challenged in the appeals before us. The decision on the questions above does not affect the said portion of tribunal's order.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

AUGUST 21, 2013
NA